

**PT 07-16**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**UNITED METHODIST VILLAGE, INC.**

**Taxpayer**

**Docket No. 05-PT-0026  
PIN 06-001-673-40  
Tax Year 2004  
Dept. No. 04-51-05**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Terry Shafer, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John A. Kauerauf of Sorling, Northrup, Hanna, Cullen & Cochran, Ltd. for United Methodist Village, Inc.

Synopsis:

This case concerns whether a six-acre parcel of property located in Lawrence County that contains a long-term residential health care facility should be exempt from property taxes for a portion of the year 2004. United Methodist Village, Inc. (“applicant”) acquired the property on April 20, 2004. The applicant alleges that the property should be exempt pursuant to section 15-65 of the Property Tax Code (35 ILCS 200/15-65) on the basis that the property is owned by a charitable organization and used exclusively for charitable purposes. The County Board of Review recommended that the

exemption be denied, and the Department of Revenue (“Department”) affirmed the Board’s decision. The applicant timely protested the Department’s decision, and an evidentiary hearing was held.<sup>1</sup> The Department contends that the applicant has met neither the ownership nor the use requirement for the charitable purposes exemption. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is a not-for-profit corporation that was incorporated in 1920 as The Old Folks Home of the Southern Illinois Conference, Methodist Episcopal Church. Since then, the applicant has operated under various names, and has used the name United Methodist Village, Inc. since 1979. (Dept. Group Ex. #3, Secretary of State records)
2. The applicant operates a long-term health care facility in Lawrenceville, Illinois that is licensed to operate 165 Skilled Nursing Care Beds and 80 Shelter Care Beds.<sup>2</sup> (Dept. Group Ex. #2, Consolidated Financial Statements, p. 6)
3. On April 20, 2004, the applicant acquired another long-term health care facility. It is on a six-acre parcel of property in Lawrenceville, Illinois and was purchased from the applicant’s wholly owned subsidiary, Holden Health Care Properties, LLC. During 2004, the facility was known as Lawrenceville Manor (“Manor” or “facility”).<sup>3</sup> (Dept. Group Ex. #3, Warranty Deed)

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<sup>1</sup> Administrative Law Judge Barbara Rowe presided over the hearing. She has since retired from her employment with the Department. Witness credibility is not an issue in this matter.

<sup>2</sup> The property that this facility is located on is not at issue in this matter.

<sup>3</sup> During the hearing, the witnesses indicated that this facility is now referred to as the United Methodist Village North Campus. (Tr. pp. 24, 57, 95, 122)

4. The facility is licensed for 119 Skilled Nursing Care Beds and 4 Shelter Care Beds. (Dept. Group Ex. #2, Admission and Discharge Policies, III)
5. When the applicant purchased the property, it entered into a non-compete agreement with the prior owners of the Manor for \$1,000,000. The purpose of the agreement was to prevent the previous owner from building a new nursing home in the area and competing with the applicant. (Dept. Group Ex. #2, Consolidated Financial Statements, p. 6; Tr. pp. 40-41)
6. One of the reasons why the applicant purchased the Manor property was to eliminate its competition. (Tr. pp. 52-53)
7. The applicant's by-laws, which were amended and adopted in January 2004, include the applicant's purpose stated as follows:

The [applicant] is formed to establish, erect, maintain, and operate on the broadest humanitarian principals a retirement home in Lawrenceville, Illinois (hereinafter referred to as "The Village") for both men and women and to promote furtherance of religious principles for the intellectual, moral, spiritual and physical development of persons of retirement age, including promotion of harmony, health and happiness of such persons in accordance with the laws of the State of Illinois and the religious and humanitarian objectives of the United Methodist Church. (Dept. Group Ex. #3, Amended By-laws, Article II, Section 1(a))

8. The applicant's by-laws also provide in part as follows:

If it becomes apparent that any resident of the retirement community established by the [applicant] has insufficient resources to pay for the costs of the services rendered to her/him and the facilities in which she/he resides, then the resident may be granted a waiver of all costs or a reduction of costs based on the resident's ability to pay. (Dept. Group Ex. #3, Amended By-laws, Article II, Section 1(b))

9. The applicant's Open Admission Policy Statement provides that it is the policy of the applicant to admit and treat all patients without regard to race, color, age,

national origin or disability. (Dept. Group Ex. #2, Open Admission Policy Statement; Tr. p. 67)

10. During 2004, the residents entered into an Admission Agreement with the Manor that provides in part as follows:

1. MANOR provides long-term services appropriate to the needs of RESIDENT constituting residence in any area certified to provide nursing care according to the need as determined by periodic nursing evaluation. MANOR agrees that RESIDENT is entitled to covered services offered within the area of his/her residency. Services for the residential living being room, meals, including special diets ordered by the medical staff, housekeeping, laundry, religious services and activity programs, and group transportation. The aforesaid services will be included in RESIDENT'S monthly fee. Any additional services required by RESIDENT will be on an "extra charge" basis. Services included in the monthly fee as of the date of this contract are subject to change by the BOARD OF DIRECTORS as reflected in any modification of this Agreement consistent with RESIDENT having received written notification from the MANOR of said modification. MANOR reserves the right to change the services that are included in the comprehensive fee, making corresponding adjustments in the rates, and to adjust the rates according to the changes in the cost of operation.
2. RESIDENT agrees to pay to MANOR the costs of services and facilities for the area in which he/she/they reside, monthly in advance.
3. Occupancy of a given facility is dependent on the RESIDENT'S physical and mental condition. MANOR reserves the right to require RESIDENT to move to other facilities if MANOR determines a move is necessary for the safety and care of the RESIDENT. All reasonable effort will be made to notify RESIDENT'S representative.
4. If the resource of RESIDENT becomes insufficient to pay the full cost of services and facilities, RESIDENT must apply for local, state or federal assistance when eligible. If RESIDENT is unable to obtain any assistance, then RESIDENT shall be allowed a reduction of the cost according to his or her ability to pay. If RESIDENT is unable to pay any amount for any services, then RESIDENT will be allowed to receive the services without any charge. (Dept. Group Ex. #2, Admission Agreement; Tr. p. 62)

11. The Admission Agreement is presented to each resident at the time that the initial paperwork is filled out. The applicant does not assess a fee for going through the application process. (Tr. pp. 63, 65-66)

12. The admission and discharge policies used at the Manor include, in part, the following:

- People admitted are to be eighteen years of age or older.
- No person shall be admitted with a mental illness that requires mental treatment or is destructive of property and himself.
- No one shall be admitted to the Lawrenceville Manor with a contagious or communicable disease.
- A statement is signed by the Attending Physician certifying that each resident is free of communicable, contagious or infectious diseases, including tuberculosis, upon admission to Lawrenceville Manor.
- Discharges or transfers shall be granted if requested by the physician, resident, conservator, guardian or agency financially responsible for his or her care. If a Resident insists on and is discharged against the advice of his physician, the facts involved must be fully documented in the clinical record. The Lawrenceville Manor, under the direction of the resident's physician or physicians, shall have the right to discharge the resident for whom such action is indicated.
- No person shall be admitted to the Lawrenceville Manor who is developmentally disabled, and who needs programming for such a condition.
- Residents shall be transferred within the facility from one room to another room if requested by physician, resident, conservator, guardian, or agency financially responsible for his or her care.
- Residents eligible and qualifying for services under Medicare A may be accepted after referral by discharge coordinator at the hospital where they are being treated or another facility certified by Medicare.
- No one shall be admitted to Lawrenceville Manor who needs prenatal and/or maternity care. If a resident becomes pregnant while she is residing in the facility, she must be transferred to another facility, providing such care is necessary.

- If the [financial] resource of Resident becomes insufficient to pay the cost of services and facilities, Resident must apply for local, state, or federal assistance when eligible. If Resident is unable to obtain any assistance, then Resident shall be allowed a reduction of the cost according to his or her ability to pay. If Resident is unable to pay any amount for any services, then Resident will be allowed to receive the services without any charge. (Dept. Group Ex. #2, Admission and Discharge Policies, IV, C, D, E, F, G, K, N, O, P, Q)

13. During 2004, no one who applied was denied admission to the Manor. (Tr. pp. 84-85)

14. During 2004, the monthly fee for a private room was \$150 per day (\$54,750 per year), and for a semi-private room it was \$113 per day (\$41,245 per year). (Tr. p. 79)

15. The applicant employs a customer service representative, Sandra Harvey, who works with residents who have concerns or issues regarding payment for the applicant's services. Her assistance is provided without charge. (Tr. pp. 63, 88-89, 93)

16. Ms. Harvey's job is to evaluate the resident's financial standing, assist the resident with applying for any available public benefits, and evaluate situations in which no public benefits are available. (Tr. pp. 89-95, 98)

17. During 2004, Ms. Harvey was presented with three situations in which residents of the facility did not pay their bills. These residents are referred to as "MS," "DA," and "VS." (Tr. p. 100)

18. Resident MS had been covered by Medicare and then became ineligible for it. The applicant provided Resident MS free care for the time period during which she was not covered by Medicare and had not yet been approved for Medicaid.

- This was from July to October 2004. Invoices issued for those services totaled \$17,064.11. (Dept. Group Ex. #2, First Set of Interrogatory Answers, #11; Tr. pp. 101-103, 115-116)
19. Resident VS became unable to continue to pay her bills and take care of her own financial affairs. The applicant contacted Social Security to allow Resident VS's income to be paid directly to the applicant. The applicant provided Resident VS free care for the time period during which she stopped paying her bills and had not yet had her income paid directly to the applicant. This was from July to October 2004. Invoices issued for those services totaled \$1,019.00. (Dept. Group Ex. #2, First Set of Interrogatory Answers, #11; Tr. pp. 103-104, 116-117)
20. Resident DA was receiving Medicaid benefits, but her family did not want her income to be paid to the applicant. The applicant arranged to have Resident DA's income paid directly to the applicant. The applicant provided Resident DA free care for the time period during which her family was receiving the income and her income had not yet been paid directly to the applicant. This was from August to October 2004. Invoices issued for those services totaled \$2,088.00. (Dept. Group Ex. #2, First Set of Interrogatory Answers, #11; Tr. pp. 105-106, 118-119)
21. The three individuals referred to above were not referred to a collection agency or collection attorneys. (Tr. p. 108)
22. The applicant does not have a policy of referring accounts to collection agencies or collection attorneys. (Dept. Group Ex. #2, First Set of Interrogatory Answers, #14; Tr. p. 108)

23. The applicant supports a retirement community located in southwest Illinois known as the United Methodist Village Retirement Communities, Inc. (“Community”). The applicant has guaranteed up to \$3,000,000 of revenue bonds that the Community has issued. (Dept. Group Ex. #2, Consolidated Financial Statements, p. 10)
24. As of December 31, 2003, the applicant had advanced \$855,839 to the Community. During 2004, the applicant advanced an additional \$209,679 to the Community under the guarantee. (Dept. Group Ex. #2, Consolidated Financial Statements, p. 10; Tr. p. 46)
25. As of December 31, 2004, the applicant recorded a reserve of \$1,065,518 for the total amount that it had advanced to the Community. (Dept. Group Ex. #2, Consolidated Financial Statements, p. 11; Tr. p. 46)
26. The applicant offered its support to the Community because it determined there was a need for a long-term care facility in the East St. Louis area. (Tr. p. 46)
27. The audited, consolidated financial statements for the applicant and “Lawrenceville Manor, Inc.” for the years ending December 31, 2004 and 2003 include supplementary information that has the individual amounts relating to the Lawrenceville Manor facility.<sup>4</sup> The auditors did not subject this information, however, to the auditing procedures applied to the applicant’s financial statements and expressed no opinion on the amounts for the Manor. (Dept. Group Ex. #2, Consolidated Financial Statements, p. 20; Tr. pp. 24-25)

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<sup>4</sup> The audited, consolidated financial statements refer to the Manor as “Lawrenceville Manor, Inc.” (Dept. Group Ex. #2) The testimony and organizational documents, however, indicate that after the applicant purchased the Manor on April 20, 2004, it is no longer a separate corporation. (Dept. Group Ex. #3; Tr. pp. 34-35)



28. The audited financial statements for the applicant and the Manor facility show the following income and expenses for the year ending December 31, 2004:

Resident Service Income	\$8,794,104
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Operating Expenses:

Professional Care	\$4,013,411
Dietary	829,154
Housekeeping	296,353
Laundry	181,848
Maintenance	293,082
Employee Benefits	747,607
Utilities	494,457
Administrative	1,238,261
Bad Debts	43,862

Non-operating Revenues (Expenses):

Contributions	321,601
Income on Investments	164,617
Net Unrealized and Realized Gains	363,112
Interest Expense	(174,963)
Value Change of Split-Interest Agreements	(38,287)
Depreciation and Amortization	(758,095)
Other Revenue and Expense	(79,841)
Net Assets Released from Restrictions	<u>5,182</u>

<u>Increase in Unrestricted Assets<sup>5</sup></u>	459,395
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Changes in Temporarily Restricted Net Assets:

Contributions	37,350
Income on Investments	45
Net Assets Released from Restriction	<u>(5,182)</u>

Change in Net Assets Before

<u>Extraordinary (Loss)</u>	\$491,608
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Extraordinary (Loss) <sup>6</sup>	<u>(1,065,518)</u>
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<sup>5</sup> Unrestricted assets represent the portion of expendable funds that are available for the daily operations and are not limited by donor restriction to use. (Dept. Group Ex. #2, Consolidated Financial Statements, p. 7)

Change in Net Assets (573,910) (Dept. Group Ex. #2)

29. The un-audited portion of the financial statements show the following income and expenses for the Manor for the year ending December 31, 2004:

Resident Service Income<sup>7</sup> \$2,760,960

Operating Expenses:

Professional Care	\$1,204,550
Dietary	232,937
Housekeeping	88,116
Laundry	109,914
Maintenance	49,182
Employee Benefits	133,699
Utilities	59,134
Administrative	331,932
Bad Debts	20,000

Non-operating Revenues (Expenses):

Interest Expense	(173,526)
Depreciation and Amortization	(195,969)
Other Revenue and Expense	<u>(58,649)</u>

Increase in Unrestricted Assets \$103,355 (Dept. Group Ex. #2)

30. Approximately 61% of the applicant's revenue is based on a reimbursement methodology determined by the rules and regulations of Medicaid and Medicare. (Dept. Group Ex. #2, Consolidated Financial Statements, p. 9)

31. During 2004, the Medicaid program was the largest payor of the fees generated at the facility. (Dept. Group Ex. #2, First Set of Interrogatory Answers, #3-6)

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<sup>6</sup> This is the amount that the applicant advanced to the Community. (Dept. Group Ex. #2, Consolidated Financial Statements, p. 11; Tr. p. 46)

<sup>7</sup> This includes payments from Manor residents, Medicare, Medicaid, and other third-party payors for Manor residents. (Dept. Group Ex. #2, First Set of Interrogatory Answers, #7)

32. For the months of March through June 2004, Medicaid paid \$81.27 per day for a resident's care. For the months of July through December, it paid \$83.71. (Dept. Group Ex. #2, First Set of Interrogatory Answers, #18)
33. The applicant has set up an endowment fund to hold gifts and bequests. (Dept. Group Ex. #2, Financial Statements, pp. 12-13)
34. Donations made to the applicant are held in the endowment fund, and as needed by the Manor, the funds are transferred to the Manor's operations general banking account to cover cash shortages. The donations are not reflected as revenue, but are considered a transfer of assets and are not listed specifically on the financial statement. (Dept. Group Ex. #2, First Set of Interrogatory Answers, #9)
35. In 2004, no charitable donations directed specifically to the Manor were received. (Dept. Group Ex. #2, First Set of Interrogatory Answers, #2, 10; Tr. p. 34)
36. The applicant does not have a separate account for the donations relating solely to the Manor. (Tr. pp. 33-34)
37. The advertising that the applicant engages in states that the Manor is a not-for-profit Christian community. (Dept. Group Ex. #2, First Set of Interrogatory Answers, #23)
38. The Director of Volunteer Services visits churches and tells them about the applicant. (Tr. pp. 128-130)
39. During 2004, approximately 90 people were employed at the Manor facility. The applicant supplements the paid staff with volunteer labor from various churches. (Tr. pp. 126-128)

40. During 2004, the applicant's highest paid employee was its administrator, who received approximately \$74,000 with the possibility of a 10% bonus. (Tr. p. 31)
41. During 2004, the highest paid employee at the Manor facility was its administrator, who received approximately \$54,000 to \$56,000. (Tr. p. 125)
42. The applicant is managed by a 15-member Board of Directors. At least five of the members are United Methodist clergy. (Dept. Group Ex. #3, Amended By-laws, Article III; Tr. pp. 19-20)
43. The applicant does not have any capital stock or shareholders. (Dept. Group Ex. #3, Secretary of State records; Tr. p. 28)
44. The applicant is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. (Dept. Group Ex. #3, Letter from IRS)
45. The applicant is exempt from the retailers' occupation tax and use tax pursuant to a determination made by the Department in December 2001. (Dept. Group Ex. #1, Letter from Dept.)

#### CONCLUSIONS OF LAW:

Article IX, section 6 of the Illinois Constitution of 1970 authorizes the General Assembly to grant property tax exemptions in limited circumstances and provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to this constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which allows exemptions for charitable purposes and provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity. \* \* \*. (35 ILCS 200/15-65(a)).

Property may therefore be exempt under this section if it is (1) owned by an entity that is an institution of public charity, and (2) actually and exclusively used for charitable purposes. *Id.*; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 270 (1996); Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156-157 (1968). Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home, *supra* at 156-57. If the primary use of the property is charitable, then the property is "exclusively used" for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill. App. 3d 658, 661 (1<sup>st</sup> Dist. 1982).

In Methodist Old Peoples Home, *supra*, the Supreme Court provided the following guidelines for determining charitable ownership and use: (1) whether the benefits derived are for an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders, earns no profits or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) whether the organization dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (4) whether the

primary purpose for which the property is used, not any secondary or incidental purpose, is charitable. Methodist Old Peoples Home, *supra* at 156-57. These factors are used to determine whether property meets the constitutional standards for a charitable purposes exemption. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 290-291 (2004). They are to be balanced with an overall focus on whether and how the organization and use of the property serve the public interest and lessen the State's burden. See DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-469 (2<sup>nd</sup> Dist. 1995).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2<sup>nd</sup> Dist. 1992).

### **Ownership**

The applicant argues that it is a charitable organization and notes that as recently as 2001 the Department determined that it was a charitable organization. The applicant states that it has existed solely to provide residential care for older people. The applicant claims that it benefits an indefinite number of people and offers charity care to anyone who is unable to pay for its services. In the applicant's view, care is provided to everyone, regardless of ability to pay. Also, under its bylaws and admission policy, the applicant accepts all who apply with the exception of those who need specialized care.

The applicant states that it has no capital, capital stock, or shareholders, and any excess monies realized from operations are reinvested in the applicant's operations. The applicant notes that in Lutheran General Health Care System v. Department of Revenue, 231 Ill. App. 3d 652 (1<sup>st</sup> Dist. 1992), the court stated that the fact that an entity's primary funding source is not public or private charity does not require the conclusion that an organization is not charitable. The applicant asserts that the money it receives does not inure to the benefit of anyone engaged in managing the facility. No profits are diverted to any individual for their own private benefit, the compensation paid to the administrative leaders is fair, and the staff receives market-based salaries.

The Department maintains that a plain reading of the bylaws shows that only after a person is actually a resident and later becomes unable to pay may a reduction or waiver of fees be possible. The Department argues that although the applicant has an open admission policy, the policy says nothing about inability to pay, and the applicant does not have a document or policy that states a person's inability to pay will not be a deterrent in the admission of that person. The Department claims that the applicant does not advertise to the general public that fee waivers are possible, and information about fee reductions is not available until a person is actually filling out an application to become a resident.

The Department contends that the applicant's property is primarily used as a business and not for providing charity. The Department notes that almost all of the revenue generated is from fees paid for services rendered, and 61% of the applicant's revenue is from Medicare and Medicaid. The Department also notes that in Riverside Medical Center v. Department of Revenue, 342 Ill. App. 3d 603 (3<sup>rd</sup> Dist. 2003), the

court found that reduced fee arrangements with Medicare and Medicaid are not charitable. The Department argues that the applicant made a business decision to accept the government payments rather than risk the possibility of empty rooms generating no fees.

In addition, the Department states that the applicant uses funds that it receives to pay for a non-charitable item: a \$1,000,000 non-compete agreement to keep competition away. The Department claims this was a commercial business decision to increase the value of the Manor. The Department also notes, *inter alia*, the following testimony during the cross-examination of the Chairman of the Board:

Q. \* \* \* Why did you want a no compete clause?

A. So that that owner could not come back in our area and build a new nursing home and compete against us.

Q. Wouldn't it be more charitable to want everybody to have more and rates go down rather than to keep your competition away and build the rates up?

A. No. That's not our philosophy. (Tr. pp. 40-41)

The Chairman of the Board continued to explain that "because census are down now, competition is very excessive," and the applicant probably could not survive if the prior owner came back to the area and built a new nursing facility. (Tr. p. 41)

Based on the evidence presented, the applicant has failed to meet its burden of proving by clear and convincing evidence that it, as the owner of the property, is a charitable organization. It must first be noted that the determination made by the Department in 2001 that the applicant was a charitable institution for sales and use tax purposes does not have an effect on whether the applicant is a charitable organization for



property tax purposes for the year 2004.<sup>8</sup> The Department may review the tax-exempt status of a corporation at any time. See Rogy's New Generation, Inc. v. Department of Revenue, 318 Ill. App. 3d 765 (1<sup>st</sup> Dist. 2000). Because the Department denied this exemption on the basis that there is neither exempt ownership nor use, the applicant must establish that both the owner of the property and the use of the property meet the criteria set forth in Methodist Old Peoples Home, *supra*. See Chicago Patrolmen's Association, *supra* at 271; Small v. Pangle, 60 Ill. 2d 510, 515 (1975).

The applicant meets the criteria of having no capital, capital stock or shareholders, but the majority of its income is from fees for its services rather than public or private donations. The audited financial statements show that during 2004 the applicant received \$8,794,104 in fees from its residents, while contributions were approximately \$360,000. As the applicant indicated, the fact that the applicant does not derive its funds mainly from public and private charity does not automatically render the corporation non-charitable, but other factors strongly support a conclusion that the applicant is operated more like a business than a charity.

Although the applicant claims that any excess monies are reinvested in its operations, the applicant paid \$1,000,000 for a non-compete agreement. This is a significant amount of money that could have been used for other purposes, such as advertising that free care is available, but the applicant chose to use the money to eliminate its competition. The applicant made a business decision to remove its competitors, and now the applicant is the only choice for long-term health care for the residents of the Lawrenceville community. The applicant has, therefore, increased its

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<sup>8</sup> The Supreme Court has found that charitable exemptions for income tax purposes under section 501(c)(3) or sales and use tax purposes are not determinative of the issue of whether property should be exempt as charitable. See Hopedale Medical Foundation, *supra* at 464.

chances of filling its facilities with residents who have the ability to pay because these residents of the community have no other option for long-term health care. Although the applicant contends that the non-compete agreement was necessary to continue its mission (Tr. p. 54), eliminating its competition ensures its viability but does not promote a charitable mission.

The applicant's charitable policy does not benefit an indefinite number of people because the policy applies only to residents and not to members of the general public. The applicant's bylaws state that once a "resident" has insufficient resources to pay for the cost of the services, the fees may be waived or reduced. This is the applicant's only specific policy regarding ability to pay, and it allows financial assistance only for people who are already residents of the facilities. The applicant does not have a standard charity policy that states it will waive fees for anyone based on financial need. Nothing indicates that fees are waived for purposes of admission.

It is important to note that extensive evidence was presented concerning the use of the Manor property, which is the property in question, but similar evidence was not presented concerning the applicant's other property. The record indicates that the applicant owns and operates another long-term healthcare facility in Lawrenceville, but no additional evidence was provided concerning this facility. Although that property's exemption from taxes is not an issue in this matter, the use of that property and the applicant's practices relating to that property are relevant in determining whether the applicant is a charitable organization. The applicant's financial statements, alone, are not sufficient to make this determination; the charitable practices at all of the applicant's property must be considered. The applicant's other facility has twice as many total beds

than the Manor facility and financially operates on a much larger scale. No evidence was presented concerning any charity that the applicant provided other than what the applicant claims were charitable write-offs at the Manor facility. The applicant's financial statements include a bad debt expense of \$43,862, but no expense for charitable care. The lack of charitable expense and evidence concerning the charitable use of the applicant's other property support a finding that the applicant is not operated as a charitable institution.

The evidence does not show that the applicant meets most of the guidelines in Methodist Old Peoples Home, *supra*, in order to be considered a charitable organization. Because this exemption is given only if both ownership and use are charitable, and the ownership element has not been established, the exemption must be denied on this basis. Nevertheless, the applicant has also failed to meet its evidentiary burden of showing the use of the Manor facility meets most of the guidelines in Methodist Old Peoples Home, *supra*.

### **Use**

The applicant claims that through its Manor facility it benefits an indefinite number of people and reduces the burdens of government. According to the applicant, its commitment to providing free care to all who need it was demonstrated on three separate occasions during 2004 resulting in more than \$20,000 in fees being forgiven. The applicant believes that at the Manor facility, charity was extended to all members of the community and was not confined to any particular class of individuals. The applicant also maintains that the Manor serves a government interest with the services that are provided.

The applicant claims that rather than place obstacles in the way of those seeking charity, it takes steps to facilitate charitable care if necessary. According to the applicant, potential residents learn of the existence of the charity care prior to admission, and there is no application fee, which distinguishes this case from Eden Retirement Center, *supra*. The applicant notes that it has a full-time employee whose job is to help residents understand their finances, apply for public benefits, and evaluate situations in which no public benefits are available. If a resident is delinquent in paying a bill, the resident does not receive calls or letters from collection agencies. The applicant states that delinquencies are written off when charity care is required. In the applicant's view, nothing requires a charitable organization to incur the expense of promoting the availability of charity care through advertisements when potential residents are told this when they arrive on the property. The applicant advertises that the Manor is a not-for-profit Christian community, and the applicant believes that anyone seeking free care would naturally be drawn to this type of institution.

In addition to providing care for older people, the applicant believes that it is also a religious ministry to them. The applicant continues to reach out to local churches to solicit donations, goods, and volunteer services. The applicant also provides financial assistance to a similar institution in southern Illinois. The applicant believes that what takes place on the property is charitable outreach by individuals motivated by their religious faith to provide for care to older individuals even after their finances are exhausted.

The Department argues that the fundamental concept of charity, which is the conferring of a gift or benefit, is not met in this case, and the only charity given is from

various church groups that visit the residents as part of their own charitable giving. The Department notes that during 2004, the applicant wrote off only \$20,000 of \$2,761,000 in revenues for the Manor's residents and accounted for this as bad debt on its financial statements. The Department believes this amount was correctly considered to be bad debt because it was a last resort measure and not a gift of charity. Also, the Department claims that under the applicant's philosophy, any for-profit business would be able to write off bad debt as charity.

The Department claims that the public is not notified of any charitable policies through advertising, brochures, pamphlets or even through the applicant's staff until someone is actually filling out an admission application. The Department asserts that the applicant's 2004 advertising budget for the Manor was \$32,365 and included direct mailings, newspapers and billboards, but none of its evidence included mention of the availability of fee waivers for those unable to pay. The Department argues that although no one was denied admission during 2004, only those able to pay would apply for admission because without advertising, nobody finds out about the possibility of fee reductions or waivers until the time of application.

The Department notes that the majority of the Manor's income is from fees for services. Although the applicant claims that it serves the government interests by caring for citizens, the Department states that any for-profit retirement community operates the same way the Manor is operated. According to the Department, having financially able residents pay for a place to live or having insurance or government pay for their space does not reduce the burden of government. The Department indicates that although the applicant has referred to religious use, the application did not seek a religious exemption.

Moreover, the Department states that the property is not used for religious purposes, and operating a retirement home is not considered primarily a religious use. See Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763 (4<sup>th</sup> Dist. 1987).

The evidence does not support a finding that the Manor property is used for charitable purposes. The Admission Agreement and bylaws indicate the policy used at the Manor allows a reduction or waiver of fees for “residents” who are unable to pay. As mentioned previously, this does not benefit an indefinite number of people because a person must already be a resident before relief is given. The admission policies used at the Manor state that “Residents eligible and qualifying for services under Medicare A may be accepted after referral by discharge coordinator at the hospital where they are being treated \* \* \*,” but the Manor does not have a standard benevolent plan that states that anyone may be admitted to its facility regardless of his or her ability to pay.<sup>9</sup> Nothing presented suggests that fees for the Manor residents are waived upon admission.

Although the applicant claims that it advertises that the Manor is a not-for-profit Christian community, this does not necessarily mean that the Manor provides charity to anyone who needs it. Nothing indicates that the general public is aware of the possibility of free care. The applicant engages in various forms of advertising, yet it does not advertise that fees are waived either at time of admission or after admission. Although the failure to advertise a fee-waiver policy is not a determinative factor (see Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060, 1068 (1<sup>st</sup> Dist. 2000) (public notice of a

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<sup>9</sup> According to the applicant’s answer to an interrogatory, a charitable plan did not even exist at the Manor during 2004, which is why the write-offs were considered bad debt. With respect to the three residents who received write-offs, the applicant stated in an answer to an interrogatory, “These Residents would have been considered benevolent care, however, because the Manor did not have such a plan in existence during 2004, the amounts were listed as bad debts for the Manor on the combined financial statement.” (Dept. Group Ex. #2, Second Set of Interrogatory Answers, #2)

fee-waiver policy is not an indispensable fact for a charitable tax exemption)), it raises doubt concerning the charitable use of the property.

The write-offs for the three residents at the Manor were correctly accounted for as bad debt. For Resident MS, the fees for the time period during which she was not covered by Medicare and had not yet been approved for Medicaid were written-off. For Residents VS and DA, the fees were written-off for the short time period during which the Manor had stopped receiving payment from the residents and had not yet begun to directly receive the residents' social security income. Although the residents stopped paying their fees, each for a short period of time, nothing indicates that the Manor understood that these three residents were forever unable to pay their fees. The Manor chose to write these debts off as uncollectible. "Writing off a bad debt is not tantamount to providing charity." Alivio Medical Center v. Department of Revenue, 299 Ill. App. 3d 647, 652 (1<sup>st</sup> Dist. 1998).

Cases concerning other retirement homes support a finding that the Manor is not used for charitable purposes. In Methodist Old Peoples Home, *supra*, the court found that the following facts did not suggest charitable use: varying the charge on the basis of the size and location of the room; requiring applicants to be in good mental, emotional, and physical health and free of any communicable disease; having no requirement that it admit those who are unable to pay the required fee; having its main source of income from fees rather than donations; and having no legal obligation to keep and maintain anyone who becomes sick or unmanageable. Methodist Old Peoples Home, *supra* at 158-159. In other cases, the exemption was denied for similar reasons. See Small v. Pangle, *supra* (applicant admitted no one who was apparently unable to pay the

substantial monthly charges and never had a resident who was unable to pay the charges); Willows v. Munson, 43 Ill. 2d 203 (1969) (no requirement that applicant admit any person it found unable to pay the entrance fee or monthly service charge); People ex rel. Nordlund v. Winnebago Home for the Aged, 40 Ill. 2d 91 (1968) (sizeable admission fee, assignment of assets, and health requirements prevented exemption despite the fact that the applicant's assets were approximately 32% from residents and 68% from gifts and endowments); Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (2<sup>nd</sup> Dist. 1995) (applicant required a substantial fee based on the size of the unit and a showing of the ability to financially and physically reside there).

In the present case, the Manor did not have a standard charitable policy in existence during 2004, and the plan that the Manor refers to as its charitable plan only applies to residents. No one was admitted despite his or her inability to pay, nothing indicates that fees are ever waived upon admission, and there is no requirement that the Manor admit anyone who is unable to pay. The health requirements in the admission and discharge policies suggest a non-charitable purpose. No one actually received any charitable benefits during 2004 because the write-offs were correctly accounted for as bad debt. The applicant does not advertise any financial assistance policy to the general public, and the main source of the Manor's income is from fees rather than donations. These facts are not indicative of a charitable use of the property.

Finally, the property also does not qualify for an exemption on the basis that it is used for religious purposes. Section 15-40 of the Code provides as follows: "Property used exclusively for . . . religious purposes, . . . qualifies for exemption as long as it is not used with a view to profit." 35 ILCS 200/15-40. In Fairview Haven, *supra*, the court



noted that the operation of a retirement home provided members of the sponsoring religious organization an opportunity to carry out Christian service work, care for the elderly, and engage in evangelization. The court stated, however, that the operation of the nursing home was not necessary for these religious purposes because they could also be accomplished through other means. Fairview Haven, *supra* at 774. The court added that religious organizations encourage the practice of all virtues, including charity and kindness to others, but these are not religious purposes within commonly accepted definitions of the word. *Id.*

This reasoning applies to the present case. The operation of the Manor is not necessary to promote the Methodist religion because that can be accomplished through other means. The primary use of the property is to provide care for the elderly, which is not a religious use within the commonly accepted meaning of that term. The applicant, therefore, has not established that the primary use of the property is for religious purposes.

Recommendation:

For the foregoing reasons, it is recommended that the exemption be denied.

Linda Olivero  
Administrative Law Judge

Enter: June 1, 2007